



July 3, 2001

Ms. Julie Reagan Watson  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2001-2865

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149080.

The Texas Department of Human Services (the "department") received a request for information pertaining to a complaint survey of Quality Infusion Care, Inc. ("Quality"). You state that some of the responsive information has been released. You claim, however, that some of the submitted information is protected from disclosure by section 552.101 of the Government Code in conjunction with several state statutes. You also assert that some of the responsive documents contain proprietary information which may be excepted from disclosure under section 552.110. We have considered the exceptions you claim and have reviewed the submitted information.<sup>1</sup>

Pursuant to section 552.305 of the Government Code, you notified Quality that its proprietary interests may be implicated by the public release of the requested information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of

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<sup>1</sup>We note that department's briefing of section 142.004(d) of the Health and Safety Code is inconsistent with its marking. Therefore, this office will only consider your arguments under section 142.004(d) for Attachment E as briefed.

exception in Public Information Act in certain circumstances). As of the date of this letter, Quality has not submitted arguments explaining why the requested information should not be released.<sup>2</sup> Therefore, we have no basis on which to conclude that the release of the submitted information would implicate the proprietary interests of Quality. See Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); see also Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, the department may not withhold any of the submitted information under section 552.110.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that Attachments D, E, and certain portions of Attachment F are protected from disclosure by section 142.009(d) of the Health and Safety Code. Section 142.009(d) provides in pertinent part:

(d) The reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except:

- (1) to a state or federal agency;
- (2) to federal, state, or local law enforcement personnel;
- (3) with the consent of each person identified in the information released;
- (4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule;
- (5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency[.]

You indicate that the records in Attachments D and E are reports, records, and working papers that were used or developed during a complaint investigation made by the department under section 142.009(c) of the Health and Safety Code. You also indicate that Attachment F is a state form which identifies deficiencies the agency noted during the complaint

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<sup>2</sup>Section 552.305(2)(B) provides that a person is entitled to submit comments to this office as to why the requested information should be withheld. The comments should be submitted to this office no later than the tenth business day after receipt of the governmental body's notice letter.

investigation. Based on your representation and our review of the submitted documents, we agree that Attachments D, E, and the identifying information in Attachment F are confidential under section 142.009(d) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.

You also claim that certain information in Attachment F is confidential under the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). We agree that most of the information you have marked in Attachment F consists of information obtained from confidential medical records. The department may only release this information in accordance with the MPA. *See* Occ. Code §§ 159.002(c), 159.004, 159.005; *see also* Open Records Decision No. 598 (1991) (in governing access to specific subset of information, Medical Practice Act governs over more general provisions of the Public Information Act). We have, however, marked information that is not subject to the MPA and must therefore, be released.

In summary, you must withhold Attachments D, E, and the identifying information in Attachment F under section 552.101 of the Government Code. You may only release the medical information in Attachment F in accordance with the MPA. You must, however, release the remaining information in Attachment F.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

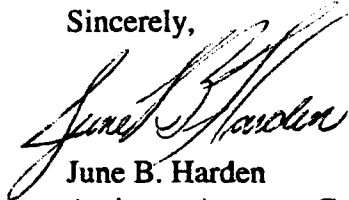
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

**Ref: ID# 149080**

**Enc. Submitted documents**

**c: Ms. Sylvia Peterson  
17110 Rolling Brook  
Sugarland, Texas 70046  
(w/o enclosures)**